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February 17, 2023

VIA ECF

Hon. Denise Cote
United States District Court
Southern District of New York
500 Pearl Street
New York, NY 10007

CC: Glenn McNamee, Esq.
Connick, Myers, McNamee &
Fitzgerald, PLLC
1225 Franklin Avenue, Suite 510
Garden City, New York I 1530

RE: Schottenstein, et al., v. Lee, et al.; Index #22-CV-1197 (VSB);
Request for Informal Pre-motion Discovery Conference

Your Honor—

Pursuant to Local Rule 37.2 and the Court's Individual Rule 2(c), Derek Lee and Pearl Chan ("Defendants") respectfully request an informal pre-motion discovery conference to resolve a dispute with non-party Tony Cardona, Hospital Administrator of Blue Pearl Pet Hospital ("Blue Pearl"), who has refused to comply fully with Defendants' December 22, 2022, subpoena for documents (annexed here as **Exhibit A**).

The Blue Pearl subpoena was served December 26, 2022 (affidavit of service annexed here as **Exhibit B**) and called for "any and all" records, including "but not limited to treatment records, vaccination records, x-rays, blood and toxicology reports, and reports related to suspected abuse or neglect of a miniature Doberman Pinscher dog named 'Ronny,' owned by Douglass Schottenstein, M.D...". In response, records were produced solely for treatment at Blue Pearl on May 3-4, 2022.

The requested documents are deeply relevant. Among Plaintiff Schottenstein's more bizarre allegations is that on or about January 22, 2020, Pearl Chan attempted to murder he and his dog by poisoning them with anti-freeze (Amend. Compl. ¶ 119, DCKT 27). According to Schottenstein, both he and his dog, who were "otherwise in good health," suffered kidney failure as a result of the alleged poisoning (Id. at ¶¶74-75).

Notably, on November 25, 2020, a separate lawsuit was filed by Schottenstein relative to his dog, in which both Blue Pearl and the American Society for the Prevention of Cruelty to Animals were named as defendants. (See Schottenstein v. ASPCA, City of New York and NYPD Detective John Ward, and Blue Pearl Holdings, LLC and Blue Pearl Operations, LLC, 20-CV-09961 (S.D.N.Y.) (DCKT. 5). In this lawsuit, Schottenstein made explicit allegations regarding his dog Ronny being treated at Blue Pearl November 7-10, 2020 (see Id. at, ¶¶21-30). In Blue Pearl's Answer, the treatment is acknowledged (see Blue Pearl Answer, ¶¶ 26-28, DCKT. 17) ("Dr. Schottenstein provided a history that the animal may have ingested some of the owner's vomit..."; "the animal received veterinary care and treatment at BLUEPEARL...". Per a separate subpoena, Defendants are also in possession of a December 10, 2020 record from Dr. Alison Shea of Animal General in which Dr. Shea notes that Schottenstein's dog "was

hospitalized for severe toxin exposure 3-4 weeks ago at BP was then taken to ASPCA while an investigation was performed as patient tested positive for illegal drugs...". (Dr. Shea record annexed here as **Exhibit C**). Notably, even the limited records Blue Pearl did produce note a "history of hospitalization for suspected toxic renal injury." (Blue Pearl record annexed here as **Exhibit D**.)

On January 31, 2023, my paralegal Sarah Sosalla called and spoke with Blue Pearl employee James Xanthos who stated there were no other records of treatment for the subject canine other than the May 3-4, 2022, records provided. A follow-up call with Blue Pearl employee Samantha Batista, who claimed to have firsthand knowledge of the dog's November 2020 visit to Blue Pearl, noted that Schottenstein was charged on November 8, 2020, for the treatment. Unfortunately, Ms. Batista was unable to access any related records.

On February 1, 2023, Defense counsel wrote a letter to Tony Cardona at Blue Pearl noting that Blue Pearl's record production was incomplete, and attaching a copy of Schottenstein's prior lawsuit, and referencing Ms. Sosalla's phone calls with Blue Pearl employees and Dr. Shea's notations. The letter requested that Blue Pearl produce *complete* subpoenaed records by February 10, 2023. Unfortunately, Blue Pearl did not produce the additional records.

The following Monday, February 13, 2023, Ms. Sosalla again attempted to reach Tony Cardona by telephone, but Mr. Cardona did not return her calls. On Wednesday February 15, 2023 defense counsel received a voicemail from attorney Glen McNamee on behalf of Blue Pearl, asking what it was Defendants wanted. The next day, Ms. Sosalla returned the call and explained that Defendants wanted what was demanded on the subpoena and reiterated in the February 1, 2023 letter. Mr. McNamee said he would not produce additional records unless the subpoena was "so-ordered" by the court, or Plaintiff Schottenstein signed a release. At no time did Blue Pearl move to quash or make a formal claim of privilege pursuant to Federal Rule 45.

Given that Plaintiffs have still not responded to Defendants' December 12, 2022, discovery demands which included demands aimed at accessing medical records for both Schottenstein and his dog, an order from the court requiring Blue Pearl to comply with Defendants' December 22, 2022, subpoena would seem the most efficient course. Barring that, however, pursuant to Local Rule 37.2 and the Court's Individual Rule 2(c), Derek Lee and Pearl Chan respectfully request an informal pre-motion discovery conference to resolve a dispute with Tony Cardona, Hospital Administrator of Blue Pearl Pet Hospital.

Regards,

/s

Jeffrey Chabrowe, Esq.
Attorney(s) for Defendants
Derek Lee and Pearl Chan